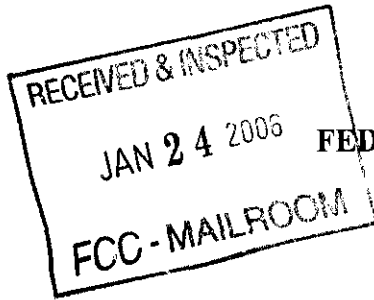


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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )

MB Docket No. 05-311

**COMMENTS OF PIKE COUNTY, KY**

These Comments are filed by Pike County, KY in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Pike County, KY believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Pike County is a rural county in the mountains of Southeastern Kentucky with a population of 67,887. Our franchised cable providers are Intermountain Cable, Charter Communications, Cequel III and Mikrotec CATV, LLC. Our community has negotiated cable franchises since January 4, 1977.

**Our Current Franchise**

Our current franchise began on June 7, 2004 and expires on June 7, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we not are currently negotiating a franchise renewal with the incumbent provider. Please note that of the cable operators in the County have exactly the same franchise.

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Our franchise requires the cable operator to pay a franchise fee to Pike County in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. However, pursuant to HB 272, as of January 1, 2006, the local cable franchising authorities in Kentucky no longer receive cable franchise fees. Instead, the Commonwealth of Kentucky imposes a 3% excise tax on multichannel video programming service. The tax is billed to subscribers and collected by providers. Additionally, the Commonwealth of Kentucky imposes a tax of 2.4% on gross revenues from multichannel video programming services and a tax of 1.3% on gross revenues from communication services. According to HB 272, local cable franchising authorities will be "held harmless" by the state for the amount of cable franchise fee revenue they have historically collected.

We require the cable operator to provide one channel for educational, and/or governmental ("EG") access channels on the cable system. Our franchise requires that our EG channels be supported in the following ways by the cable operator: The cable operator shall provide without charge to Pike County and the Pike County Board of Education, the assistance, advice and technical aid necessary to provide utilization of the governmental and educational channels. The cable operator shall maintain adequate staff and/or equipment to operate playback of access programming from the cable operator's facilities for the Educational and Government access channel. The cable operator shall provide a minimum of two operable video cameras, available full-time to access users, for the purpose of producing programming for the system's EG access channel. Any persons using such equipment may be required to participate in training given by the Grantee and give a reasonable deposit to the Grantee for the use of such equipment. If persons request training, the Grantee shall provide such training free of charge. Finally, the cable operator shall provide to the Government a grant, to provide, repair and maintain the equipment necessary to broadcast live and taped programming from the Pike County Fiscal Courthouse. The total cost of said equipment shall not exceed \$8,000. The costs shall reflect the cable operator's pro-rata share of the cost incurred based on the number of subscribers each cable operator has in the County.

Our franchise contains the following requirements regarding emergency alerts: The cable operator shall cooperate with the Government in the use and operation of the Emergency Alert System ("EAS") in accordance with applicable federal rules and regulations. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Section 25 states as follows:

(a) Office Hours and Telephone Availability.

(1) The Grantee will maintain an office within fifteen (15) miles of Pike County at which Subscribers may pay bills, report service or billing problems, request service or exchange equipment, and which shall be open during Normal Business Hours and be conveniently located.

(2) The Grantee will provide a local and/or a toll-free telephone access line which will be available to its Subscribers twenty four (24) hours a day, seven (7) days a week.

(i) Trained representatives of the Grantee will be available to respond to customer telephone inquires during Normal Business Hours. Each such employee shall be trained to perform efficiently the various tasks, including responding to consumer inquires and complaints, necessary to provide consumer services in a responsible and courteous manner.

(ii) After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquires received after Normal Business Hours must be responded to by a trained representative of the Grantee within one (1) business day after receipt of the complaint.

(3) Under Normal Operation Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operation Conditions.

(4) Under Normal Operation Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(5) The Grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.

(b) Installation Outages and Service Calls: Each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Installations within 150 feet of the existing distribution system will be performed within seven (7) business days after an order has been placed unless scheduled at a later time by customer request.

(2) Grantee will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known.

(3) When a Subscriber requests a change in the type of Cable Service he/she is currently receiving, the Grantee must begin action to change the type of service provided the next business day after notification. If the desired change is not made within seven (7) days of notification, and the change would decrease the Subscriber's bill, the Grantee shall credit the Subscriber's bill despite the fact that the service has not been changed.

(4) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The Grantee may schedule service calls and other installation activities outside of Normal Business Hours for the expressed convenience of the customer.)

(5) The Grantee may not cancel an appointment with a customer after close of business on the business day prior to the scheduled appointment.

(4) Credits-

(i) Credits for service will be issued no later than the customer's second billing cycle following the determination that a credit is warranted.

(ii) When the use of service or equipment furnished by the Grantee is interrupted due to any cause other than the negligence or willful act of the Subscriber or the failure of equipment provided by the Subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, upon the request of the Subscriber, for the service and equipment rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of twelve (12) hours from the time it is reported to or detected by the Grantee. For purpose of this section, every month is considered to have thirty (30) days.

Our original franchise contained the following reasonable build schedule for the cable operator: The operator was required to build 60% of its system with 2 years after receiving certification from the FCC and complete an additional 20% each year thereafter so that after 3 years the entire system shall be substantially constructed. The operator was required to build to all areas of its franchise area having a minimum density of 20 homes per mile.

Section 14 of our franchise requires that the cable operator currently provide service to the following areas of our community:

(a) The Grantee shall be required to extend its system pursuant to the following requirements:

(1) Grantee must extend and make Cable Television Service available to every dwelling unit, including individual apartment units, within one hundred twenty (120) days of enactment of this Ordinance, any unserved area reaching an average minimum density of at least eighteen (18) dwelling units, including individual apartment units, per road mile, as measured from the existing system. If at any time after the expiration of the initial one hundred twenty (120) day period, the Government notifies the Grantee that there are unserved dwelling units, including individual apartment units, which meet the minimum density requirements, the Grantee must extend and make Cable Television Service available to those dwelling units after notification from the Government, unless Grantee applies for and is granted a waiver of this requirement from the Government.

(2) Grantee shall only be required to extend and make Cable Service available to apartments if consent can reasonably be obtained from the building's owner.

(3) Grantee must extend and make Cable Television Service available to any unserved resident within the Initial Service Area requesting connection at the standard connection charge, if the connection to the unserved resident would require no more than a standard one hundred and fifty (150) foot aerial drop line. With respect to requests for connection requiring an aerial drop line in excess of one hundred fifty (150) feet, Grantee must extend and make available Cable Service to such residents at a connection charge not to exceed that permitted by applicable law.

(A) Upon written request, each initial Subscriber(s) who paid for such line extension shall be reimbursed as follows: for a period of three (3) years after construction of the extension, each additional Subscriber whose service line is

directly connected to the extension installed shall be required to contribute to the cost of the extension based on the re-computation of both the Grantee's portion of the total cost and the amount contributed by the Subscribers. The Grantee shall refund to those Subscribers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each Subscriber to the extension. All Subscribers directly connected to the extension for a three (3) year period after it is placed in service shall contribute equally to the cost of the extension.

While our franchise does not require that the cable system be rebuilt, several of the operators in the County have rebuilt their systems to either 550MHz or 750 MHz. However, there are many areas of the County where cable modem services are not available.

Our franchise contains the following insurance requirements: commercial general liability insurance with limits of not less than \$1,000,000.00 and comprehensive automobile liability insurance providing limits of not less than \$1,000,000.00. Additionally, cable providers in the County must have either a letter of credit or a performance bond in the amount of fifteen thousand dollars (\$15,000).

Section 10 of the franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

(a) For violation of any of the following provisions of this Ordinance, liquidated damages may be recoverable from the letter of credit or performance bond as follows:

(1) For failure to complete construction and installation of the system, complete line extensions, or provide service in accordance with this Ordinance and the Grantee's application as incorporated herein, unless the Fiscal Court specifically approves the delay by resolution or because of reasons beyond the control of the Grantee, Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(2) For failure to comply with Section 24, Grantee shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.

(3) For failure to comply with any other provisions of this Ordinance, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(b) Before the Government may assess any liquated damages under this section and before any sums are withdrawn from the letter of credit or performance bond, the Government shall give the Grantee written notice and an opportunity to be heard in accordance with the following procedure:

(1) The Government shall notify the Grantee, in writing, of an alleged failure to comply with the provisions of this Ordinance as outlined in Section 10(a), which notice shall specify the alleged failure.

(2) The Grantee shall, within fifteen (15) days after receipt of the notice, either cure the alleged failure or, in a written response to the Fiscal Court, either present facts and arguments in refutation or excuse of such alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

- (3) If the Grantee fails to cure and/or fails to notify the Government of its cure within fifteen days, the Fiscal Court shall hold a public hearing to determine whether or not any violation has occurred. Notice of such public hearing shall be sent out not less than seven (7) nor more than twenty-one (21) days before the public hearing
- (6) Following the public hearing and a majority vote of the Fiscal Court finding that a failure to comply with a provision of the franchise has occurred, the Fiscal Court may issue a written decision ordering liquidated damages in accordance with this section.
- (c) Except as provided in federal law, Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions. Payment of liquidated damages shall not excuse nonperformance under this Ordinance.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Section 6(b) of our franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

If federal regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, the Government shall have the right to amend this Ordinance to make it consistent with the modified federal laws. Any such amendment shall be limited to the specific change in federal law.

Please noted, that in addition to federal law, Section 163 of the Kentucky Constitution, requires that cable operators must obtain franchises to use city or county streets for any purpose. It is significant to note that the debates of the Constitutional Convention indicate that the purpose of Section 163 "was to prevent the Legislature from authorizing the indiscriminate use of the streets of the city by public utilities without the city being able to control the decision as to what streets and what public ways were to be occupied by such utilities." Mt. Vernon Tel. Co, Inc. v City of Mt. Vernon, 230 S.W.2d 451, 453 (Ky. Ct. App. 1950). In Ray v. City of Owensboro, 415 S.W. 2d 77, 79 (Ky. Ct. App. 1967), the court also stated that the "purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants."

In City of Owensboro v. Top Vision Cable Co. of Ky., 487 S.W.2d 283, 286-87 (Ky. Ct. App. 1972), where Top Vision Cable claimed that Owensboro lacked the authority to require that

local CATV operations obtain franchises, the Court reiterated the interpretation of Section 163 that was set forth in Ray. The court also rejected Top Vision's argument that the city could not issue franchises because the "cables and wires will be placed on poles and strung over public ways where existing utility companies have the right to operate by other franchises." City of Owensboro, 487 S.W. 2d at 287. The court stated, "under its general obligation to provide its citizens with safe, clean and unobstructed public ways, the presence of television cables, even in connection with existing utilities, would be an added burden on the city." Id. Thus, the court concluded that the city had the right to require a franchise because the presence of television cables would be an additional responsibility.

### **Competitive Cable Systems**

Our community has never been approached by a competitive provider to provide service. However, we do have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

### **Conclusions**

The local cable franchising process functions well in Pike County, KY. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

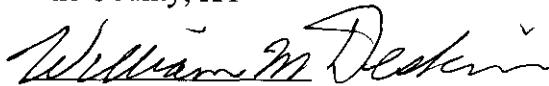
Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Pike County, KY therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of

the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Pike County, KY



By: Judge/Executive William M. Deskins  
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